

K Mart Corporation and Los Angeles County and Vicinity District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 21-CA-28434¹

November 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On May 4, 1993, Administrative Law Judge Richard J. Boyce issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a reply brief, and the Respondent filed a brief in reply to the General Counsel's.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, K Mart Corporation, Covina, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ In his decision, the judge entered unfair labor practice findings against the Unions involved in this proceeding in Cases 21-CC-3140 and 21-CC-3142 and against Respondent K Mart in Case 21-CA-28434. No exceptions were filed to the judge's unfair labor practice findings in Cases 21-CC-3140 and 21-CC-3142. Accordingly, on June 22, 1993, the Board issued an Order adopting those findings and severing those cases from the present case.

² The Respondent does not except to the judge's findings that it violated Sec. 8(a)(1) of the Act on December 18, 1991, by discriminatorily prohibiting representatives of the Unions from distributing handbills in front of its Covina, California store, by causing the police to remove two handbillers from the premises, and by causing the arrest of a consultant to the Unions. The Respondent does except to having to post the judge's "Notice to Employees" and requests that the Order of the judge be modified by deleting the requirement that the Respondent post any notice to its employees or, alternatively, that the language of the notice be changed. We find that the judge's recommended Order and notice to employees are consistent with those orders and notices entered by the Board in similar cases, and we find no basis to depart from such use in this case. See *Sentry Markets*, 296 NLRB 40, 44 (1989), and *Mountain Country Food Store*, 292 NLRB 967, 969 (1989). In this regard, we note that the Respondent violated Sec. 8(a)(1) at this site by interfering with Sec. 7 rights. The notice simply summarizes what Sec. 7 rights are, and says that the Respondent will not engage in the precise conduct involved here or in any like or related conduct.

Peter Tovar, Esq., for the General Counsel.

Thomas R. Fredericks and Leroy D. Westmoreland, Esqs., for Covina, California, for K Mart.

John T. De Carlo, Esq., for the District Council and Local 1506.

DECISION

STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge. I heard this consolidated matter in Los Angeles, California, on July 21-23, 1992.

The complaint alleges that the Los Angeles County and Vicinity District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (District Council) and Carpenters Local Union No. 1506, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Local 1506) violated Section 8(b)(4)(ii)(A) and (B) of the National Labor Relations Act (Act) on about October 26 and November 16, 1991; and that K Mart Corporation (K Mart) violated Section 8(a)(1) of the Act on December 18, 1991.¹

FINDINGS OF FACT

I. JURISDICTION

K Mart has retail stores throughout the United States. The parties have stipulated and I find that it is an employer engaged in and affecting commerce within Section 2(2), (6), and (7) of the Act; and that it is an "employer" and a "person" for purposes of Section 8(b)(4)(A) and (B), respectively.

The parties also have stipulated and I find that Greg Construction (Greg) and Kuhler Corporation (Kuhler) are contractors in the construction industry, and that each is a "person" for purposes of Section 8(b)(4)(B).

II. LABOR ORGANIZATION

The parties have further stipulated and I find that the District Council and Local 1506 (jointly Unions) are labor organizations within Section 2(5) of the Act.

III. THE ALLEGED VIOLATIONS OF SECTION 8(B)(4)

A. Allegations

The complaint alleges that the Unions violated Section 8(b)(4)(ii)(A) and (B) on October 26, 1991, by engaging in coercive and threatening conduct at K Mart's Covina store, including the blocking of ingress and egress and the display of banners, in furtherance of their disputes with Greg and Kuhler.

The complaint further alleges that the Unions violated Section 8(b)(4)(ii)(A) and (B) on November 16, 1991, by engaging in coercive and threatening conduct at K Mart's Fontana store, including the display of banners and marching in front of the store, in furtherance of their disputes with Greg and Kuhler.

¹ K Mart filed the charges in Cases 21-CC-3140 and 21-CC-3142 on October 29 and November 20, 1991, respectively. The District Council filed the charge in Case 21-CA-28434 on December 20, 1991. The operative consolidated complaint issued on May 29, 1992.

B. Undisputed Evidence Relevant to Both Allegations

The parties have stipulated and/or the undisputed evidence establishes that:

1. K Mart at relevant times had been refurbishing and enlarging various of its stores in southern California. Greg and Kuhler, both nonunion, were among the contractors engaged in this undertaking.

2. Neither Greg nor Kuhler had performed work at the Covina or Fontana stores. Indeed, neither store had undergone refurbishment or expansion at any time proximate to the Unions' alleged misconduct.

3. The Unions have had a labor dispute with Greg and Kuhler since at least April 1991. They have not had a labor dispute with K Mart at any relevant time.

4. On about April 17, 1991, the Unions demanded that K Mart agree to use only general contractors who used union carpenters on K Mart projects. On about October 25, 1991, the Unions demanded that K Mart agree to direct all general contractors on those projects to use only union carpenters. K Mart did not accede to these demands.

C. The Events of October 26

The Unions held a demonstration in the parking lot and sidewalk area outside the Covina store on October 26. It lasted from about 9 a.m. to noon. At least 50 people participated.²

A number of them wore blue jackets bearing union logos, and one wore a rat costume bearing the label "K Mart."

The Covina demonstration contained these elements:

1. A skit. A skit, presented two, perhaps three, times, conveyed the implication that K Mart did not provide adequate health care coverage for its employees. The parties stipulated that the skit took this form:

One person was dressed as a nurse; another was dressed as a doctor; a third person depicted a parent; and the fourth person played the role of the parent's child. The actor playing the role of the doctor asked the parent if he could help the parent and the child. The parent stated that he wanted to receive some medical attention for his child; that the child was injured. The doctor asked the parent if he had health-care coverage. The parent said no, that he did not. Those assembled watching the skit made a loud "oo" sound as he said this. The doctor said that he would not be able to provide medical attention without insurance coverage.

One of the actors wore a sign identifying him as "K Mart Corporate Manager." The skit was presented on the sidewalk fronting the store, some 25 feet from the entrance/exit doors, and substantially if not totally precluded use of the sidewalk for its intended purpose during presentation.

2. A structured question-and-answer exercise. Using a bullhorn, John Richardson, a consultant to the Unions and the demonstration organizer, led the participants in a question-and-answer sequence during each skit presentation. Among the questions he asked and they answered were these:

Q. Is this what we want?

A. No!

Q. Who's to blame?

A. K Mart!

Q. Why are we out of work?

A. K Mart!

Q. What's the problem?

A. K Mart!

Q. What's the solution?

A. Union!

3. Chanting. The demonstrators chanted from time to time: "K Mart No! Union Yes!"

4. Handbilling. Some of the demonstrators distributed handbills, in English and Spanish, to prospective customers. The handbills stated:

What if your child was seriously ill, but you had no health insurance? You would take your child to the hospital.

Many of the construction workers building and remodeling K-Mart's stores in southern California would take their children to the hospital too. But some of the construction workers employed by contractors hired by K-Mart Corporation don't have health insurance.

We all agree that money is less important than a child's life. Also, we know that medical costs are skyrocketing. That's the tragedy. The child's life is saved, and the family is threatened with losing their home and everything they own to pay the bill.

And what happens if the entire medical bill can't be paid? The people with insurance pay—they pay extra to cover the bills of the uninsured. It's called uncompensated care.

You see, K-Mart isn't a good value for shoppers in this community. Please, shop elsewhere, where responsibility and community interest prevail.

STOP THIS ABUSE
DON'T SHOP AT K-MART!
THANK YOU!

THE MEMBERS OF CARPENTERS LOCAL 1506

The handbills included this language, in small print, at the bottom:

Our dispute is with Greg Construction, Cochran Construction and Kuhler Corp. We are appealing only to the public—the consumer. We are not seeking to induce any person to cease work or refuse to make deliveries.

5. Balloons. Helium-filled balloons, inflated at a van in the store's parking lot, were distributed to demonstrators and prospective customers. Some of the balloons bore a circle and a diagonal slash—the international symbol of prohibition—superimposed on the word "K-Mart." The reverse side of these same balloons bore this legend:

We are appealing only to the public, the consumer. We are not seeking to induce any person to cease work or refuse to make deliveries. Carpenters Local 1506.

Other balloons contained the circle and slash superimposed on a rat depicted as salting and chewing a hardhat.

²The parties stipulated that 50 participated. The record otherwise indicates that the number was somewhat greater.

Those receiving the balloons held them aloft with string. A few escaped inside the store, rising to the ceiling.

6. Banners. Four banners were displayed from fixed positions in the parking lot, each at least 50 feet from the store entrance. One, measuring about 3 by 6 feet, stated: "Carpenters Local 1506." The other three, each approximately 3 by 12 feet, contained one or the other of these messages:

- (a) K Mart Ignores the Health Care Needs of Their Own Workers.
- (b) K Mart is Unfair to American Workers.
- (c) K Mart President Makes \$1,313,009.00/Year!

Near rally's end, Richardson introduced himself to Oscar Benson, regional manager of K Mart's west central region. Benson, testifying credibly and without contradiction, described the attendant conversation this way: Benson told Richardson he should make sure the participants "stood off to either side of the front doors"; that it was "a fire safety issue." Richardson responded that the rally would be "breaking up shortly, anyway," and that the rally "wasn't about the store . . . [but] . . . about the awarding of contracts."

Richardson then stated that he had "tried to contact" Jim Godwin, K Mart's regional construction manager, "many times," but that Godwin would not "meet with" him. Richardson added: "If you'll just sit down with us, I'm certain we can resolve these issues." Benson came back that he was not "involved in construction issues," and Richardson "repeated several times" that he was "certain" that K Mart and the Unions "could resolve [their] differences" if they would "just sit down."

Benson declared with reference to the one banner that the salary of K Mart's president was low relative to his responsibilities, and Richardson conceded, based on his knowledge of executive salaries as reported in *Fortune Magazine*, that K Mart's president was not overpaid. Richardson went on:

You have to understand, this is strictly PR. Besides the emotion of the Carpenters, this is just business. We're just trying to make a statement. We're going to demonstrate in front of . . . a different K Mart every week until such time as you sit down with us, and we have 42,000 members in southern California. We can paint a picture of K Mart any way we want—very favorable and positive, or negative. Our people shop K Mart and they'll continue to shop K Mart, and we can promote your company rather than have them shop elsewhere if you'll just sit down with us and work with us.

Benson repeated that he "wasn't a construction representative," and Richardson stated: "I know, but you can get my message to Mr. Godwin and the people who are in construction." The exchange ended on that note, and the rally shortly ended, as well.

Benson further credibly testified that, finding about 20 demonstrators clustered in the store's entrance/exit area early in the demonstration, he asked them to "vacate the area directly in front of the exit and entrance doors, as these were fire exits and this was a safety issue." Benson added that they complied.

Perhaps 30 to 45 minutes later, according to Benson, he again asked some 10 to 15 demonstrators, who were distrib-

uting handbills, "to vacate the area immediately in front of the doors." He told them they "could stand on either side and pass out their leaflets," he recalled, and they complied.³

Benson also testified that he saw one family, which had been approaching the store, turn around and leave after being spoken to by two men, one in a union jacket. He testified, as well, that a female customer with two small children asked him if it was safe to leave the store. He assured her that the demonstrators "were noisy but nonviolent," he continued, and she declined his offer to escort her to her car.

D. The Events of November 16

The Unions held a demonstration in the parking lot outside the Fontana store on November 16. It lasted from about 10 a.m. to noon, and 75 to 100 people participated.⁴ As before, some wore jackets and/or caps displaying union logos, and someone masqueraded as a rat.

The Fontana demonstration contained these elements:

1. Handbilling. Between four and eight demonstrators distributed handbills to customers from positions on either side of the entrance/exit doors. In addition, some 10 to 20 demonstrators tendered handbills to the occupants of vehicles as the vehicles entered and moved about in the parking lot. The handbills were identical to those distributed during the Covina demonstration.

2. Banners. The four banners used in the Covina demonstration again were displayed from fixed positions, each 50 feet or so from the store entrance. The three banners specifically referring to K Mart had been modified since the Covina demonstration to include this language at the bottom in small print:

Our dispute is with Gray Construction, Cochrun Construction, and Kuhler Corporation. We are appealing only to the public, the consumer. We are not seeking to induce any person to cease work or refuse to make deliveries.

3. Parading. At both the beginning and the end of the demonstration, the demonstrators aligned themselves in an oval and paraded in the parking lot. This took place about 60 feet from the store entrance.

4. Chanting. While parading, the demonstrators, led by Richardson with his bullhorn, chanted such sentiments as "Don't Shop K Mart" and "Go to Target." They also displayed the handbills and waved small American flags while parading.

5. A massed rally. At about 11 a.m., the demonstrators congregated for 15 to 20 minutes at the front of the store about 15 feet away from the entrance. The crowd filled the sidewalk, preventing its intended use, and spilled into the fire lane beyond the curb. Richardson conducted a raffle—involv-

³Led by the Unions' counsel, Richardson testified that he did not see any blocking of entrances or exits by the demonstrators. He elsewhere conceded, however, that "at least four to six" handbillers were always "in front of the door"; that some of the handbills were "directly in front of the glass doors" contrary to his instructions; and that "on a couple of occasions [he] had them move out of the way."

⁴The parties stipulated that 75 to 100 participated. As in the case of the Covina demonstration, the record otherwise suggests that the number was somewhat larger.

ing shirts, hats, tool belts, etc.—during this phase of the demonstration.

The parking lot in which this demonstration took place serves several businesses in a shopping center. Gary Hunt, the general manager of the Fontana store, testified credibly and without contradiction that the center was especially busy on November 16, a Saturday; that the tender of handbills to vehicle occupants caused some traffic backup and disruption; that the “rat” also caused disruption from time to time by laying down in the path of traffic in the lot; that, while the demonstrators’ parading did not disrupt vehicular traffic, it did interfere with the retrieval of shopping carts by store attendants, causing a shortage inside the store; and that customers sometimes were discouraged from getting carts because demonstrators were sitting or leaning on them while holding up one of the banners.

Hunt also credibly testified that a customer, handbill in hand, told him during the demonstration that K Mart should provide health care coverage for its employees;⁵ and that a female customer with two children stuck her head in the store after the crowd had dispersed and asked him, “Is it safe to come in now?”

E. Conclusions

I conclude that the Unions violated Section 8(b)(4)(ii)(A) and (B) as alleged during the demonstrations at the Covina and Fontana stores on October 26 and November 16, respectively.

My reasoning:

(a) In point of law, and as stipulated by the parties, K Mart was a neutral to the dispute involving the Unions, Greg, and Kuhler.

(b) The Unions’ conduct during the rallies went beyond peacefully imparting their message to customers; indeed, the totality of their conduct—which might fairly be deemed picketing despite the absence of conventional picket signs—imposed economic pressure that necessarily “threaten[ed], coerce[d], or restrain[ed]” K Mart within the meaning of clause (ii) of Section 8(b)(4). *Mine Workers (New Beckley Mining)*, 304 NLRB 71 (1991). See also *Associated General Contractors v. NLRB*, 514 F.2d 433, 438 (9th Cir. 1975); *Sheet Metal Workers v. Hardy Corp.*, 332 F.2d 682, 686 (5th Cir. 1964).

(c) Objects of the Unions’ 8(b)(4)(ii) conduct on the two occasions were to force or require K Mart to enter into an agreement prohibited by Section 8(e)⁶ and to cease doing business with Greg and Kuhler, thus bringing that conduct

within the prohibitions of subsections (A) and (B), respectively.

That the Unions had a proscribed subsection (A) object is revealed by their demand of April 17 that K Mart agree to engage only contractors who used union carpenters; by their demand of October 25—the day before the Covina rally—that K Mart agree to direct all contractors on its projects to use only union carpenters; and by various of Richardson’s comments to K Mart’s Benson during that rally—all in the context of his prefatory statement that the rally was “about the awarding of contracts.” E.g., *Teamsters Local 282 (D. Fortunato, Inc.)*, 197 NLRB 673, 678–679 (1972).

The presence of a proscribed subsection (B) object is shown by the absence of Greg and Kuhler, then and always, from the rally sites (*Sailors Union (Moore Dry Dock)*, 92 NLRB 547, 549 (1950); by the Unions’ failure to disclose clearly that their dispute was with the primaries, not K Mart (*Ibid.*);⁷ and by the inability of the customers to whom the Unions’ appeal was directed to honor that appeal other than to withhold patronage generally—as, indeed, the Unions urged them to do—from K Mart.⁸

IV. THE ALLEGED VIOLATIONS OF SECTION 8(A)(1)

A. Allegation

The complaint alleges that K Mart violated Section 8(a)(1) on December 18, 1991, by causing the removal of two union agents from its property and the arrest of another who had been handbilling outside the Covina store.

B. Evidence

Starting in the summer of 1991, the Unions occasionally distributed the previously described handbills at various K Mart stores, including that in Covina, in furtherance of their dispute with Greg and Kuhler.

The Covina handbilling generally had been without incident. That all changed on December 18, however, when Dennis Mason, the store’s merchandise manager, thrice summoned the Covina police in connection with that day’s handbilling. At K Mart’s behest, the police ordered handbillers Walter DeCroix and Keith Floyd off the property on the second visit, and took John Richardson into custody on the third, after Mason had placed him under citizen’s arrest. Richardson, as earlier related, was a consultant to the Unions.

DeCroix and Floyd began handbilling at the Covina store at about 9 a.m. on 18 December. They stood on either side

⁵To which Hunt replied that it did, and that the demonstration was aimed at contractors.

⁶Extracting from *Carpenters District Council of Northeast Ohio (Alessio Construction)*, 310 NLRB 1023 (1993): “An agreement is unlawful under Section 8(e) of the Act if (1) it is an agreement of a kind described in the basic prohibition of that section—e.g., an agreement to cease doing business with another person, (2) it has secondary, as opposed to primary, work preservation objectives, and (3) it is not saved by coming within the terms of the construction industry proviso to Section 8(e).” That proviso exempts agreements between unions and employers “in the construction industry”—which K Mart is not—from 8(e) illegality. See generally “*Woelke & Romero Framing v. NLRB*,” 456 U.S. 645, 652–660 (1982); *NLRB v. Longshoremen ILA*, 447 U.S. 490, 503–504 (1980); *Connell Co. v. Plumbers Local 100*, 421 U.S. 616, 635 (1975).

⁷This was particularly so during the Covina rally, in which the Unions so pointedly targeted K Mart as the object of their displeasure. Weighed against the aggregate of the Unions’ conduct during the rallies, I do not see the inclusion of the qualifying language at the bottom of the handbills, and at the bottom of the banners during the Fontana rally, as exonerative.

⁸The picketing in *NLRB v. Fruit Packers*, 377 U.S. 58 (1964), which the Court held not to be of a secondary nature, is distinguishable from the conduct in question. That picketing, although at the neutral Safeway’s stores, was intended to influence consumers not to purchase the primary’s produce there. Here, on the other hand, the primaries supplied no product sold in either store, which precludes any claim that the Unions sought only to persuade customers not to purchase such a product. See *DeBartolo Corp. v. Florida Gulf Coast Building Trades Council*, 485 U.S. 568, 577 (1988).

of the entrance/exit doors, proffering the handbills to customers as they passed by. DeCroix had handbilled at the Covina store several times before. Floyd had handbilled at K Mart stores previously, but not at Covina.

Mason called the police the first time at about 9:40 a.m. He testified that, having been paged by Margie Wilkerson, the service-desk attendant, about "a disturbance at the front of the store," he went to that area and saw Floyd and an unidentified customer to the left of the entrance doors. Mason went on:

I saw Mr. Floyd's back to me . . . and both of them were approximately eight inches to a foot apart with their fingers pointing in each other's faces approximately six inches apart.

Mason admittedly could not hear what Floyd and the customer were saying, but, asked his "impression of the character of the conversation," he testified: "Very threatening." The customer did not complain to management about the incident, and Mason made no attempt to learn his identity.

Mason testified that James Sylvester, assistant store manager, observed the incident with him. Sylvester did not testify.

Thomas Fredericks, K Mart's labor relations counsel, testified that Mason called him, reporting "an altercation between a handbiller and a customer in front of the store," and that he instructed Mason to call the Covina police. Fredericks particularized concerning Mason's report:

He told me, I believe, [that] Renell overheard . . . the remarks made by the handbiller to the customer, and that the remarks were, "Fuck you."

"Renell" is Renell Vejvoda, a secretary in K Mart's regional office. She testified that she never spoke with Mason regarding the incident, and he testified that he not only could not recall talking to her about it, but that he could not remember how he learned that she had witnessed it.

Regardless, Vejvoda testified that she observed the incident while approaching the exit door after being in the store on break. Her account:

I observed a customer, older man, coming in the store. He was halfway in the door, and one of the handbillers yelling at him, and I just—he was cussing at him . . . He [the handbiller] directly said, "Fuck you." . . . I then told the service-desk lady that she'd better get some management people up here 'cause there might be trouble.

Vejvoda testified that the handbiller and the customer were maybe "a foot" apart; that the handbiller "was very abrupt and loud"; that, while the handbiller made remarks in addition to "fuck you," they did not register with her because she was "in shock"; and that she did not hear the customer say anything.

Mason called the police as Fredericks had directed, reporting "the possibility of a fight right outside our front doors." Floyd and the customer were still engaged when two officers arrived.⁹ One of the officers, Robert Macias, testified that

they were "talking loudly to each other" when he and his partner, Dennis Tinnel, walked by on their way inside.

Once inside, Macias testified, the two officers spoke with a management representative he identified as Sylvester. Mason's recital suggests, however, that he, not Sylvester, spoke with the officers. In any event, one or the other called the officers' attention to the ongoing encounter between Floyd and the customer, as Macias recalled, said the store also "had received complaints from customers that the handbillers were bothering them as they were going in and out of the store," and asked the officers to "advise" the handbillers "that they [could] continue to stay there and hand out handbills if they did not cause any more problems or disturb the customers at all."

Macias continued that, after speaking with Sylvester, he and Tinnel "advised" the handbillers that management had said they "could remain there if they did not disturb the customers or were not involved in any more arguments with the customers." Floyd's encounter with the customer by then had ended. Both he and Floyd told the officers it was "just a misunderstanding," to which Floyd added that there would be "no more problems." The officers then warned that they would ask DeCroix and Floyd to leave should they be called back because of customer complaints.

Floyd testified that the incident had its genesis when the customer began to enter the store after accepting a handbill, turned around, came back toward him, threw the handbill to the ground, and verbally abused him. Floyd recalled the customer's saying, among other "derogatory" remarks: "Why don't you bums get a real life, you son-of-a-bitch?" Floyd rejoined, as he recalled:

Excuse me, sir. You don't have to talk to me in that manner. I am not a bum. I do have a real job, and . . . you don't call me a son-of-a-bitch.

The exchange continued in this vein for perhaps "three or four minutes," according to Floyd, with both men speaking in raised voices, after which the customer "kind of like calmed down" and they talked in a conversational tone "like two guys standing on the corner" for another several minutes. The customer eventually entered the store, and Floyd did not see him again. Floyd estimated that he and the customer were about 2 feet apart during the incident. They did not touch.

DeCroix, nearby as the incident unfolded, likewise testified that the customer instigated it by insulting Floyd;¹⁰ that they then "started arguing back and forth"; and that, after "yelling at each other" for "about four minutes," they "more or less made up . . . [and] . . . got along great." DeCroix recalled that the two were "face to face, six inches apart," during the initial unpleasantness.¹¹

Mason next called the police at about 11:30 a.m. Asked his reason, he testified:

¹⁰ DeCroix testified that the customer started it all by calling Floyd an "asshole" and telling him to "get a fucking job." Floyd, as indicated, recalled the customer's instead calling him a son-of-a-bitch, and asking why he did not get a real job.

¹¹ DeCroix first testified that Floyd did not use "cuss words," later conceding that he "might have said 'fuck you' to the customer." Floyd denied saying that.

⁹ Mason testified that the police response was "very quick."

I personally received two customer complaints on the handbillers, and was also up front at the service desk when Mr. Floyd walked into our store approximately 25 feet and removed handbills from our garbage can.

Mason testified that, after receiving the two complaints and seeing Floyd retrieve the handbills, he called Fredericks, who "recommended that we go ahead and call the police."

Fredericks recalled Mason's report this way:

[H]e told me the police had come out the first time, that the police had warned the handbillers not to engage in further confrontations with our customers, and that since that time he'd received customer complaints with regard to handbillers forcing the customers to take handbills . . . I believe one customer complaint was that a customer told him the handbiller was out of control. He also related to me that he had personally observed the same handbiller who had been involved in the altercation with the customer come into the store, reach into a garbage can inside the store, take handbills out of the garbage can, dust them off, and go back outside. And I believe he asked me what to do.

Mason also reported, according to Fredericks, that he

personally [had] observed the handbiller jumping in front of customers, blocking customers' paths, [and] forcing customer[s] with handbills . . .

Fredericks went on that he told Mason to call the police, adding: "I believe he asked me whether he could tell the police to have the handbillers leave, and I told him, yes, he could."

Fredericks did not ask Mason to obtain the names of the complaining customers. He testified that it is not "good business" to involve customers in the store's "legal matters."

Two officers, Hugh Clark and Richard Hastert, eventually arrived.¹² Mason testified that both he and Sylvester spoke with them; and that, after he recounted the incident between Floyd and the customer that had prompted the earlier call (which the officers said they knew about), he told them about the more recent developments—the two customer complaints and Floyd's sortie to the garbage can—and asked that they remove the handbillers from the premises.

The officers obliged, telling DeCroix and Floyd they "weren't allowed on the property and . . . to feel free to [handbill] out on the public sidewalk."

DeCroix then phoned Richard Green, a business agent in charge of handbilling at the Covina store, reporting this development. Green said he would be out. DeCroix and Floyd meanwhile situated themselves on the public sidewalk alongside a driveway into the store parking lot, where they attempted to handbill incoming vehicles. Green testified that effective handbilling was physically "almost impossible" in this circumstance.

Mason elaborated concerning one of the customer complaints:

I had one gentleman, probably in his mid-40s, come up to me and say, "This guy out here is out of control." And I said, "Who are you talking about?" And he pointed out to Mr. Floyd and said, "He had a handbill, and he shoved it right into my face and said, 'Take one of these.'"

Mason later testified, contrary to this testimony, that the customer did not single out the offending handbiller.

Regarding the other customer complaint, Mason testified: "I had one elderly lady, probably mid-50s, [who] said that a handbiller had walked over and stuck a flyer into her face." Mason testified that the lady did not identify the handbiller.

After the lady's complaint, Mason recounted, he remained in the service-desk area for "approximately five minutes" observing the handbillers' activities.¹³ He testified that he saw Floyd "blocking the path to the front door while he was trying to pass out leaflets." Mason added that Floyd was "continually moving," and sometimes moved in front of the doors. Mason testified that he also saw Floyd

going towards the customer in front of the front door and putting a handbill close to a lot of the people's faces; not everybody, but some of the people.

Both DeCroix and Floyd denied ever forcing handbills on customers or blocking their paths. DeCroix testified that, if a customer declined his proffer, he simply said, "Thank you," and that was the end of it. Similarly, Floyd testified that he would say, whether or not a customer accepted a handbill: "Thank you and have a good day."

Floyd admittedly retrieved handbills from the garbage can in one instance when he and DeCroix ran out. As against Mason's assertion that he and Fredericks later measured the distance, finding the can to be 25 feet inside the doors, Floyd averred that it was no more than 2 to 3 feet beyond the doors. Floyd further testified that the retrieval took "maybe five seconds . . . just long enough for the doors to open, reach right there, pick them up, and step back outside."

K Mart had installed the can expressly for the discard of the handbills. It did not object to the handbillers' entering the store to use the restroom or patronize the cafeteria, which they sometimes did. DeCroix testified handbillers never before had retrieved handbills from the can because store employees had done it for them.

Although conceding that Floyd's entering the store on this occasion did not cause a disturbance, Mason deemed it unacceptable. He explained:

I just felt it unnecessary to walk into our store and take out the leaflets that they are boycotting our store, and then re-use them in order to hurt our business. I felt that part disruptive.

Mason called the police yet again, at about 1:30 p.m., after DeCroix, Floyd, and a third person, Freddie Lopez, had begun handbilling anew at the entrance/exit doors. Both Green and Richardson had come to scene upon hearing of

¹² Mason testified that the police response was less prompt this time.

¹³ The service desk is near the doors.

the ejection, and Richardson told them to return to the front of the store.

The service-desk attendant, Wilkerson, informed Mason of the resumed activity at the doors. Wilkerson further reported, according to Mason, that she had received “quite a few customer complaints” about the handbillers, leading him to surmise that they now “were a lot more aggressive toward the customers.”¹⁴

Wilkerson did not testify.

Mason testified that, going to the service desk upon getting Wilkerson’s page, he “noticed” that the handbillers’ “behavior was much more aggressive.” He elaborated:

The one I particularly watched was Mr. Floyd, and he was more or less not just walking to the people, but kind of bounding around, jumping at people to make sure he got everybody that walked in.

Mason continued, led by K Mart’s counsel, that Floyd was “positioning himself” to block the path of patrons. Mason enlarged that Floyd “tried to get right in front of” customers approaching the doors; that he “positioned himself more or less right in the middle of both the double doors, and he was trying to catch people going in both sides.”

Mason first testified that, after watching this for from 30 seconds to a minute, he reported to Fredericks that the handbillers had returned, and that “one in particular was a lot more aggressive”; and that Fredericks told him to “go ahead and call the police.” Mason later testified that he was “not sure” if he spoke with Fredericks before calling the police.

Fredericks recounted Mason’s reporting that the handbillers had returned, that they were “more aggressive” than before, and that “more customer complaints” had been lodged about them. Mason also reported, according to Fredericks, that the handbillers “had a vehicle parked in a fire lane . . . that [they] were using as a supply wagon for their leaflets”; and that it “had been parked there for approximately 15 minutes.” Mason then asked him what to do, Fredericks testified, and Fredericks “told him to call the police.”¹⁵

Mason testified that he first “noticed” a car in the no-parking/fire-lane zone fronting the store while waiting for the police to respond to his third summons. Mason expanded:

¹⁴ Mason later testified that he had received no customer complaints after the handbillers returned to the front of the store. Asked, then, if complaints had been relayed to him, he testified: “I believe so.” Next asked by whom, he answered: “I’m not positive.”

¹⁵ On cross-examination, Fredericks was notably tentative regarding this conversation. He testified that he did not “recall the exact words of the conversation at all,” adding: “I think I asked him to describe, and I believe he did describe . . . when the customer would walk up, they’d stand in front of the customer to pass out a handbill.” Asked if Mason elaborated concerning the customer complaints, he testified: “I don’t recall him elaborating on it He may have I don’t recall . . . having asked him additional questions about customer complaints.” Next asked if he questioned Mason regarding what the customers had said, he testified: “I don’t recall. I may have I don’t recall the entire extent of his description of the customer complaints to me.” Fredericks further testified, during this sequence: “I don’t recall . . . [that] . . . he gave me a description of the vehicle” in the fire lane.

I saw the hatchback on the vehicle up, and I saw one case of handbills back there I did see one of the handbillers grab leaflets out of that car, but I do not remember which one at this time.

Mason first testified that the car remained there “approximately five minutes,” later estimating the time at “approximately 15 minutes.” He could not recall its make, model, or color—“all I remember is that it was a hatchback, and that the hatchback was open, facing north.” Mason conceded that people “quite often” park in the fire lane to load, unload, and wait for others.

As earlier noted, both DeCroix and Floyd denied ever forcing handbills on customers or blocking their paths. In addition, Richardson, who had remained to observe after directing the handbillers to return to the entrance/exit doors, testified that they did not block the doors, force handbills on customers, or otherwise engage in harassment. Wesley Jensen, an official of the District Council who observed with Richardson, testified to the same effect.

As for the car supposedly parked in the fire lane to supply the handbillers, DeCroix, Floyd, Richardson, Jensen, and Green all denied that it happened.

The four officers who had answered one or the other of the previous calls all responded to this latest call. They first conferred with Mason and Fredericks inside the store. Officer Macias recounted that Mason and Sylvester

said again that they were receiving complaints from customers of the leafleters’ disturbing them while they were entering the store, and they also said one of the subjects—they didn’t identify him—said he kept entering the store and taking out leaflets that customers had been throwing away.

Mason and Sylvester did not identify any of complaining customers; nor did they “specify” how many complaints they had received or the number of times handbillers had entered the store to retrieve handbills. The record contains no evidence that management mentioned the alleged fire-lane abuse to the police.¹⁶

Macias testified that Mason and Sylvester then excused themselves to confer with Fredericks; and, upon returning, asked the officers “to advise” the handbillers “that they would be placed under citizen’s arrest” if they did not leave. One of the officers¹⁷ then told Richardson that the police had received “several complaints” over the handbilling, that the police “had been out to the location three times on the same matter,” and that the handbillers “would be subject to citizen’s arrest . . . if they did not leave”

The officer also stated, according to Richardson, that “it was unlawful to handbill by city ordinance”; then “vacillated a little bit” when Richardson asked which ordinance that was.

Richardson responded, per Macias, that he had been observing the handbilling for “some time,” that he had not seen any “problems,” and that he “would not tell them to leave.” Macias recalled that he conveyed this to Mason, who

¹⁶ Mason testified that he could not recall mentioning it, and that he did not know if Sylvester did.

¹⁷ Officer Hastert testified that Officer Clark “did most of the talking” on behalf of the police. Clark did not testify.

came back, “Okay then, we’ll place them under citizen’s arrest.” With that, Richardson directed the handbillers to leave to avoid arrest, then announced that he “would stay and continue to hand out leaflets.” The officers warned that he would be “subject to arrest,” and he said he understood.

The three handbillers then left, with Richardson taking their place. Fredericks, by now present, asked the officers the “procedure” to be followed to effect a citizen’s arrest, and one of them replied: “[Y]ou need to approach them, verbally tell them, ‘You’re under arrest for trespassing.’”

Fredericks testified that, with Mason at his side, he then engaged Richardson as follows:

I told Mr. Richardson that I wanted him to understand what was going to happen, that if he didn’t leave the K Mart premises Mr. Mason was going to tell him to leave under penalty of being placed under citizen’s arrest, and that the policeman was at that point in time going to take him away. Mr. Richardson had told me that he was peacefully handbilling and that he intended to stay. I told Mr. Richardson that, earlier, a handbiller had said “fuck you” to a K Mart customer, a handbiller had entered our store and retrieved handbills from our trash, and our customers were being harassed, and the police were out for the third time because of this conduct. I told Mr. Richardson that he should talk to his people to verify that these events had occurred. Mr. Richardson told me, “I don’t need to talk to my people, and I’m not going to leave.” And at that point I turned the matter over to Mr. Mason and left.

Mason told Richardson that he “would be subject a citizen’s arrest” if he did not leave. Richardson continued to handbill, asserting that he “had a right” to do so, and Mason told him he was under citizen’s arrest. The police then read him his Miranda rights, handcuffed him, took him to police headquarters in a patrol car, booked him for trespass, and placed him in a holding cell. He was released on his own recognizance later in the day, and the district attorney chose not to prosecute.

Fredericks testified that his decision to have Richardson arrested derived from this reasoning:

The ultimate arrest of Mr. Richardson involved a variety of what I perceived as delinquent conduct by the Union on the sidewalk of the K Mart store on December 18. My analysis of Mr. Richardson being arrested was his defiance of the request from Mr. Mason to leave the premises after the police had been out to the store three times, after Mr. Mason had received complaints from customers about the handbillers, after Mr. Mason had personally observed the handbillers acting delinquently and harassing our customers, including the handbiller who I learned from Ms. Vejvoda’s knowledge said “fuck you” to one of our customers. All of those factors entered into my evaluation of the appropriateness of the citizen’s arrest

Officer Hastert testified that the police would not have taken Richardson into custody absent the citizen’s arrest. He explained: “[I]t’s a private-party situation. If they don’t want them on their property, then it’s their obligation to arrest them.”

Various other activities were going on in front of the store that day—a Salvation Army bellringer soliciting donations, a celebrity-impersonator promoting a ballot initiative, and someone seeking donations for a religious organization. The record does not disclose if any of these activities entailed the distribution of literature.

C. Conclusion

I conclude that K Mart violated Section 8(a)(1) as alleged by causing the police to remove DeCroix and Floyd from the premises incidental to the officers’ second visit, and by causing the arrest of Richardson on their third visit.

My reasoning:

(a) Barring disqualifying misconduct by the handbillers, their activities were protected by the Act. *Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180, 206 fn. 42 (1978); *Hardee’s Food Systems*, 294 NLRB 642, 643 fn. 4 (1989); *Giant Food Markets*, 241 NLRB 727, 728 (1979).

(b) The handbillers did not engage in disqualifying misconduct.

The incident between Floyd and the customer that prompted the first police call was isolated, was provoked by the customer’s verbal abuse of Floyd,¹⁸ did not cause the customer to file a complaint, and ended amicably; hence, Floyd’s part in it was not so egregious as to defeat the Act’s protection.¹⁹ And, even if it were, K Mart “condoned” that conduct in point of law by thereafter directing the police to advise the handbillers that they “could remain there if they did not disturb the customers or were not involved in any more arguments with the customers.” *Circuit-Wise, Inc.*, 308 NLRB 1091 fn. 2 (1992); *White Oak Coal Co.*, 295 NLRB 567, 570 (1989).

Regarding the supposed misconduct triggering the second police call, I am persuaded that misconduct did not happen.²⁰ Mason’s testimony about two customer complaints—that one had said a handbiller was “out of control” and another had complained that someone “stuck a flier into her face”—not only was nonprobative hearsay, but was too nebulous to raise more than a weak suspicion of misconduct.

In addition, I was and am unconvinced by Mason’s assertions that he saw Floyd “blocking the path to the front door” and “putting a handbill close to a lot of the people’s faces.” This testimony likewise suffered from a lack of concrete elaboration, beyond which it was uncorroborated, was cogently refuted by DeCroix and Floyd, and was undermined by Mason’s less-than-compelling witness-stand demeanor. Moreover, I do not view the Act’s protection as so flimsy that Floyd’s retrieval of handbills from the garbage can overrode it. This happened only once, took but a few seconds, admittedly did not cause a disturbance, and was not all that distinguishable in principle from the handbillers’ permissibly entering the store to relieve themselves or buy a refreshment in the cafeteria.

¹⁸ Crediting Floyd’s and DeCroix’s uncontradicted accounts.

¹⁹ Even if, as seems likely, Floyd said “fuck you” to the customer before the exchange assumed a more congenial tenor.

²⁰ I seriously doubt, moreover, that K Mart officials honestly believed otherwise. Regardless, an “honest belief that the activity was unprotected is not a defense if, in fact, the misconduct did not occur.” *Keco Industries*, 306 NLRB 15 (1992). See also *NLRB v. Burnup & Sims*, 379 U.S. 21, 23 (1964).

As for the conduct allegedly prompting the third police call, I am persuaded once more that the handbillers committed no offense removing their activities from the Act's protection. Mason's testimony that Wilkerson had reported "quite a few customer complaints" again was nonprobative hearsay and hopelessly vague; and his further testimony that the handbillers now were "much more aggressive"—that Floyd was "bounding around," "jumping at people," "positioning himself" to block the path of patrons, etc.—suffered the same infirmities as his earlier recital—vagueness, lack of corroboration, convincing refutation by DeCroix and Floyd (not to mention Richardson and Wesley Jensen), and his own ineffective performance under oath.

Finally, I do not credit Mason that the handbillers had parked a car in the fire lane. Apart from the union witnesses' convincing denials, Mason's account lacked corroboration, he was unable to supply any identifying particulars other than that the car was a hatchback, his two estimates of how long the car was so parked—first 5, then 15, minutes—were suspiciously discrepant, and Fredericks' description of the conversation in which Mason supposedly reported this matter to him was, as earlier observed, "notably tentative," betraying likely fabrication.

(c) While the Supreme Court held in *Lechmere Inc. v. NLRB*, 112 S.Ct. 841 (1992), that the Act's protections generally do not require an employer to "allow distribution of union literature by nonemployee organizers on his property"²¹ (a principle that doubtless also applies to area-standards distributions by nonemployees, as in the present case), the Court excepted that situation in which "the employer's access rules discriminate against union solicitation."²²

Inasmuch as K Mart permitted others—the Salvation Army, the promoter of a ballot initiative, someone seeking donations for a religious organization—to solicit in front of the store the same day it effected the ouster of the union handbillers, this exception obtains; and for that reason K Mart violated the Act as alleged. *Great Scot*, 309 NLRB 548 (1992); *Richards United Super*, 308 NLRB 201 (1992); *Davis Supermarkets*, 306 NLRB 426 (1992).²³

²¹ Ibid.

²² Ibid. quoting from *Sears, Roebuck & Co. v. Carpenters*, supra, 436 U.S. 205. The Court also excepted that situation in which the union "has no other reasonable means of communicating its organizational message to the employees." Ibid. This latter exception presumably does not obtain in the circumstances at hand. As the Ninth Circuit stated with reference to it: "[W]e must hold that the exception applies when the nonemployee picketers are trying to reach employees, not customers. Here, the pickets and handbills were aimed at the general public, not the employees. Therefore, the inaccessibility exception to the rule that an employer need not accommodate nonemployee organizers does not apply." *John Ascuaga's Nugget v. NLRB*, 968 F.2d 991, 997–998 (9th Cir. 1992).

²³ As noted, the others were engaged, so far as the record shows, in solicitation but not distribution; and the Board generally permits greater employer restrictions on distribution than mere solicitation because of "inherent differences" between the two. E.g., *Eastex, Inc.*, 215 NLRB 271, 274–275 (1974); *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 619 (1962). Nothing in the cited Board decisions dealing with discriminatory access post-*Lechmere* suggests that the Board accords significance to this distinction in the present context, however; and, in any event, K Mart caused the removal of the handbillers not because they were handbilling as opposed to soliciting, but because of their supposed misconduct while handbilling.

CONCLUSIONS OF LAW

In Cases 21–CC–3140 and 21–CC–3142, the District Council and Local 1506, jointly, violated Section 8(b)(4)(ii)(A) and (B) on October 26 and November 16, 1991, by threatening, coercing, or restraining K Mart with an object of forcing or requiring it to enter into an agreement prohibited by Section 8(e) and to cease doing business with Greg and Kuhler.

In Case 21–CA–28434, K Mart violated Section 8(a)(1) on December 18, 1991, when it discriminatorily prohibited representatives of the District Council and Local 1506 from distributing handbills in front of its Covina store, first, by calling the police to remove them, and, second, by placing John Richardson under citizen's arrest and causing the police to take him into custody and book him.

REMEDY

Having found that the District Council and Local 1506 violated Section 8(b)(4)(ii)(A) and (B) and that K Mart violated Section 8(a)(1), I will provide in my recommended Orders that they cease and desist from their misconduct and that they take certain affirmative action to effectuate the policies of the Act.

With regard to K Mart's misconduct, that affirmative action will include provisions that it notify the Covina Police Department and the Covina Municipal Court in writing, copy to Richardson, that the National Labor Relations Board has determined that Richardson's arrest on December 18, 1991, violated the National Labor Relations Act; that it request in writing, copy to Richardson, that said department and said court expunge any and all records of that unlawful arrest; and that it make Richardson, the District Council, and Local 1506 whole, with interest, for all reasonable legal fees and expenses incurred as a result of the arrest.²⁴

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁵

ORDER

A. Respondents Los Angeles County and Vicinity District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, and Carpenters Local Union No. 1506, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening, coercing, or restraining K Mart with an object of forcing or requiring it to enter into an agreement prohibited by Section 8(e) and/or to cease doing business with Greg Construction, Kuhler Corporation, or any other person.

(b) In any like or related manner threatening, coercing, or restraining K Mart or any other person in violation of Section 8(b)(4)(ii)(A) or (B) of the Act.

²⁴ Interest shall be figured in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

²⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post in their business offices and meeting halls copies of the attached notice marked "Appendix A."²⁶ Copies of the notice, on forms provided by the Regional Director for Region 21 (in Spanish as well as English if deemed appropriate by the Regional Director), after being signed by an authorized representative on behalf of the District Council and Local 1506, shall be posted by them immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members customarily are posted. The District Council and Local 1506 shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Sign and mail sufficient copies of the notice to the Regional Director for posting by K Mart, Greg Construction, and Kuhler Corporation, should those firms so desire, at all locations where notices to employees customarily are posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the District Council and Local 1506 have taken to comply.

B. Respondent K Mart Corporation, Covina, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminatorily prohibiting representatives of the Los Angeles County and Vicinity District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and/or Carpenters Local Union No. 1506, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, from distributing handbills in front of its store in Covina, California, by demanding that they leave, by calling the police to remove them, by placing them under citizen's arrest and causing the police to take them into custody and book them, or in any other way.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Covina Police Department and the Covina Municipal Court in writing, copy to John Richardson, that the National Labor Relations Board has determined that Richardson's arrest on December 18, 1991, violated the National Labor Relations Act; in writing, copy to Richardson, request that said department and said court expunge any and all records of that unlawful arrest; and make Richardson, the District Council, and Local 1506 whole, with interest, for all reasonable legal fees and expenses incurred as a result of the arrest.

(b) Post at its store in Covina, California, copies of the attached notice, marked "Appendix B."²⁷ Copies of the notice, on forms provided by the Regional Director for Region 21 (in Spanish as well as English if deemed appropriate by the Regional Director), after being signed by K Mart's authorized representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in con-

spicuous places, including all places where notices to employees customarily are posted. K Mart shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps K Mart has taken to comply.

APPENDIX A

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act, and has ordered us to post and abide by this notice.

WE WILL NOT threaten, coerce, or restrain K Mart with an object of forcing or requiring it to enter into an agreement prohibited by Section 8(e) of the Act and/or to cease doing business with Greg Construction, Kuhler Corporation, or any other person.

WE WILL NOT in any like or related manner threaten, coerce, or restrain K Mart or any other person in violation of Section 8(b)(4)(A) or (B) of the Act.

LOS ANGELES COUNTY AND VICINITY DISTRICT COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, AND CARPENTERS LOCAL UNION NO. 1506, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

APPENDIX B

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT discriminatorily prohibit representatives of the Los Angeles County and Vicinity District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and/or Carpenters Local Union No. 1506, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, from distributing handbills in front of our store in Covina, California, by demanding that they leave, by calling the police to remove them, by placing them

²⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

²⁷ See fn. 26, *supra*.

under citizen's arrest and causing the police to take them into custody and book them, or in any other way.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL notify the Covina Police Department and the Covina Municipal Court in writing, copy to John Richardson, that the National Labor Relations Board has determined that Richardson's arrest on December 18, 1991, violated the Na-

tional Labor Relations Act; WE WILL in writing, copy to Richardson, request that said department and said court expunge any and all records of that unlawful arrest; and WE WILL make Richardson, the District Council, and Local 1506 whole, with interest, for all reasonable legal fees and expenses incurred as a result of the arrest.

K MART CORPORATION